



Scottish Information
Commissioner

**Decision 041/2008 Mr William Scott and the Chief Constable of Central
Scotland Police**

Photographs taken in the gymnasium of Dunblane Primary School

Applicant: Mr William Scott
Authority: Chief Constable of Central Scotland Police
Case No: 200800131
Decision Date: 18 March 2008

Kevin Dunion
Scottish Information Commissioner

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Decision 041/2008 Mr William Scott and the Chief Constable of Central Scotland Police

Photographs taken in the gymnasium of Dunblane Primary School - withheld on the basis of section 39(1) of the Freedom of Information (Scotland) Act 2002 – health and safety – Commissioner upheld decision to withhold information

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (general entitlement); 2(1) (Effect of exemptions) and 39(1) (Health, safety and the environment)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Decision 034/2007 - The Sportsman's Association of Great Britain and Northern Ireland and the Chief Constable of Central Scotland Police

<http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200503197.asp>.

Facts

Mr William Scott (Mr Scott) requested photographs taken in the gymnasium of Dunblane Primary School following the shootings at the school on 13 March 1996 from the Chief Constable of Central Scotland Police (Central Scotland Police). Central Scotland Police responded by stating that the information requested was exempt in terms of section 39(1) of FOISA since disclosure would, or would be likely to, endanger the physical or mental health or the safety of individuals and that the public interest was in favour of withholding the information. Following an internal review of this decision by Central Scotland Police, Mr Scott remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Central Scotland Police had dealt with Mr Scott's request for information in accordance with Part 1 of FOISA.



Background

1. On 28 September 2007, Mr Scott wrote to Central Scotland Police requesting copies of the photographs taken in the gymnasium of Dunblane Primary School following the shootings on 13 March 1996 (in which Thomas Hamilton killed 16 pupils and a teacher). His letter explained that he wished to access these photographs in order to understand how apparent discrepancies between the evidence provided by two witnesses to the scene could arise.
2. Central Scotland Police wrote to Mr Scott in response to his request for information on 20 November 2007. Central Scotland Police confirmed that it held the requested information, but stated that the information was exempt in terms of section 39(1) of FOISA since disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual and that the public interest favoured withholding the information. Central Scotland Police referred Mr Scott to my previous decision 034/2007, which concerned a similar request for copies of photographs of bullet holes at the same scene.
3. Mr Scott wrote on 28 November 2007 to Central Scotland Police requesting a review of its decision. In particular, Mr Scott stated that the matter of whether the truth was put before the Cullen Inquiry (the Public Inquiry into the shootings at Dunblane Primary School on 13 March 1996) was one of considerable public interest. Mr Scott also commented this was a matter of interest to a significant number of persons affected by the handgun ban introduced following the Dunblane shootings.
4. On 8 January 2008, Central Scotland Police wrote to notify Mr Scott of the outcome of its review. Central Scotland Police upheld its initial response that the information was exempt in terms of section 39(1) of FOISA and that the public interest was in favour of withholding the information.
5. On 25 January 2008, Mr Scott wrote to my Office, stating that he was dissatisfied with the outcome of Central Scotland Police's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Scott had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



The Investigation

7. A letter was sent by the investigating officer to Central Scotland Police on 11 February 2008 asking, in terms of section 49(3)(a) of FOISA, for its comments on Mr Scott's application. Central Scotland Police were asked to describe the photographs that were held and which fell within the scope of Mr Scott's request, and were asked for detailed submissions on the application of the exemption and its consideration of the public interest. Central Scotland Police responded with the information requested on 28 February 2008.
8. In his request for internal review by Central Scotland Police, Mr Scott had stated that granting him access to the information was not equivalent to putting it the public domain and that he did not intend to make the information available to the media. During the investigation, it was drawn to Mr Scott's attention that should the photographs be released to him, even for inspection purposes only, it would be difficult to see how Central Scotland Police could refuse to release them to any other person who asked for the information. It was noted that the effect of disclosure under FOISA is that of making information publicly available. Mr Scott was asked whether he wished to proceed with the case in the light of this. In response, Mr Scott confirmed that he wished me to investigate his application.

The Commissioner's Analysis and Findings

9. In coming to a decision in this matter, I have considered all the information and the submissions that have been presented to me by both Central Scotland Police and Mr Scott and I am satisfied that no matter of relevance has been overlooked.
10. As noted above, Mr Scott indicated in his request for review, should he be provided with copies of the photographs, the photographs would not be put into the public domain. However, any information released under FOISA is effectively put into the public domain. Granting Mr Scott access to the information under FOISA would be equivalent to putting that information it the public domain, and I must consider this request on that basis.



11. In its submissions to my Office, Central Scotland Police submitted that release of scene of crime photographs of the Dunblane Primary School gymnasium would be likely to cause enormous distress to relatives of the deceased, the survivors and their families and the wider Dunblane community. In particular, it was stated that such distress inflicted would, or would be likely to, endanger the mental health of some individuals concerned. Central Scotland Police therefore withheld the photographs from Mr Scott on the basis of section 39(1) of FOISA which exempts information if its disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.
12. In respect of my view on section 39(1), I would refer to my previous decision, quoted by Central Scotland Police in its initial response to Mr Scott, and which also relates to similar information in respect of Dunblane Primary School, decision 034/2007. In particular, I would refer to paragraphs 17 – 24 in which I consider section 39(1) in detail.
13. As I said in that decision, the shock and revulsion felt at these killings cannot be underestimated and although more than 10 years have now passed since the killings, Dunblane remains a highly emotive subject for many people, but particularly for the relatives of those who were killed or injured, and, of course, for those children involved.
14. The request under consideration in this case sought the photographs I considered previously, but also a number of others that would reveal in even more graphic detail of the aftermath of events in the gymnasium. Having personally viewed the photographs considered in decision 034/2007 and sought details of the contents of the additional photographs requested here, I took the view that it was not necessary for me to view all of the photographs requested by Mr Scott.
15. My views as expressed in decision 034/2007 took into consideration both the content of the photographs, but also the context. In this case, whatever else is revealed in each individual photograph, they collectively reveal the scene of a crime that still is a cause of considerable distress to the families and community concerned.
16. Having considered the content and context of the photographs requested by Mr Scott, I am satisfied that in terms of section 39(1) of FOISA the release of the requested information would, or would be likely to, endanger the mental health of an individual and that the information is therefore exempt in terms of section 39(1) of FOISA.
17. Given that I have decided that the information is exempt in terms of section 39(1), I must now apply the public interest in section 2(1)(b) of FOISA and consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.



The public interest test

18. Whilst Central Scotland Police stated that they were aware of “an interest amongst a small number of individuals” in respect of disclosure of the photographs requested by Mr Scott, they were of the view that the balance of the public interest in withholding the requested photographs outweighs that of disclosure.
19. I have considered and have weighed up the public interest in favour of release and the public interest in favour of maintaining the exemption. Once again I would refer to my earlier decision (in particular paragraphs 27 and 28 of decision 034/2007), where I considered the public interest test in respect of information which falls within Mr Scott’s request. From Mr Scott’s correspondence to Central Scotland Police and to my Office, the only public interest argument appears to be that in assisting Mr Scott to assess the Cullen Inquiry and, in particular, an alleged inconsistency in evidence from two witnesses.
20. I accept that there is a public interest in understanding the events of 13 March 1996, both in the interests of justice and to identify any lessons that might be learned. I have noted Mr Scott’s comments on the alleged inconsistencies in evidence, but have also noted Central Scotland Police’s response to this point, which noted that the traumatic circumstances of 13 March 1996 were such that it would be surprising if evidence from different persons agreed in all details.
21. There are public interest arguments which favour the maintenance of the exemption. The Cullen Inquiry has considered the circumstances of the events in Dunblane in considerable depth. It was drawn to my attention that much of the information gathered during the investigation and selected by the Crown Office for submission to the Cullen Inquiry was made publicly available in redacted form in the National Archives of Scotland. It was also noted that the Crown Office had chosen not to deposit for public inspection any photographs of the crime scene in the National Archives of Scotland.
22. I must also consider the effect of the release of the information on the parents of the deceased and injured, as well as on the children who survived. While this is a matter which I took into account in considering whether the section 39(1) exemption could be applied to the photographs, it is also pertinent to consider the degree of distress when considering where the public interest lies.



23. On balance, given the fact that an inquiry has already been held into the events at Dunblane, and given the likely distress which would be caused to the relatives of the deceased and injured were the photographs to be released, I find that the public interest would be better served by the exemption being maintained than by the information being released. I therefore uphold the decision of Central Scotland Police not to provide Mr Scott with the information he requested.

Decision

I find that the Chief Constable of Central Scotland Police (Central Scotland Police) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Scott.

Appeal

Should either Mr Scott or Central Scotland Police wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
18 March 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

39 Health, safety and the environment

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.